

BOARD OF REVIEW DECISION

Title of Publication: Toilet Rape

Other Known Title: Not Stated

Format: Computer Text File Printout

Director/Author: Not Stated

Producer/Publisher: Not Stated

Country of Origin: Not Stated

Language: English

Applicant: Robert John Schofield

Classification:	Objectionable.
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Descriptive Note: Not Applicable

Display Conditions: Not Applicable

Date of entry in Register: 02 August 2006

Date of direction to issue a label: Not Applicable

OFLC No: 601813

Excisions: Not Applicable

Reasons for excisions:

Not Applicable

**Summary of reasons
for classification:**

The publication *Toilet Rape* is a text of an email message of approximately 5,000 words. It begins with a disclaimer that it is a work of fiction and that it contains “sexual elements between teens/men and of an almost non-consensual nature...” as well as bondage and “a tiny bit of urination”. It further states that “If you are not allowed to read this for any valid reasons, please do not continue further.”

Toilet Rape is a story told in the first person by a 24 year old male. The narrator describes how he was urinating in a public toilet, when he was set upon by a group of four young men, who tie him up, and initiate him into the world of homosexual sex. The text contains explicit descriptions of masturbation, fellatio and anal intercourse.

Section 3(2) of the Films, Videos, and Publications Classification Act 1993 (the Act)

Section 3(2) of the Act is a deeming provision. The Classification Office in its submission provides a definition of a deeming provision, which is: “the purpose of a deeming provision is to create a legal fiction: it has a defining function. It is used only if something is to be what it is not.” Law Commission, Legislation Manual: Structure and Style (Report 35, 1996) para. 167.

Section 3(2) has a list of activities in paragraphs (a) to (f) which are deemed objectionable if the publication promotes or supports, or tends to promote or support, the activities in those paragraphs.

Section 3(2)(b)

Under Section 3(2)(b) of the Act, a publication is deemed to be objectionable if it “promotes or supports, or tends to promote or support, the use of violence or coercion to compel any person to participate in or submit to sexual conduct”.

Toilet Rape tells the story of the rape of one man by a number of men. Early in the story one of the rapists states “I think you are trying to get yourself raped”. The narrator replies “No I am not! Just let me go!” On page 3 the narrator pleads “Please don’t hurt me”. The victim is clearly an unwilling participant in the activity initially. The rapists acknowledge the process as rape, when one states “You know you don’t seem too troubled by the fact that you are about to be raped”.

The gang element intensifies the coercion and also normalises it to the extent that there is neither apparent harm, nor consequences, for any of the participants.

The Board finds there is violence and coercion in the rape. The victim is frightened and knows he is likely to be hurt by the rape. He is clearly forced to submit to sexual conduct, at least initially.

Promotes or Supports

The Board then must decide if *Toilet Rape* “promotes or supports, or tends to promote or support, the use of violence or coercion to compel a person to participate in or submit to sexual conduct”.

Within a short period of time after the rape commences, the victim is shown to have an almost complete conversion of emotion, from fear to enjoyment of the rape. The victim and narrator state “I was in sexual heaven” and “the bitch is enjoying it”. “The feeling was crazy! I was moaning in delight.” The narrator then states, “I didn’t feel embarrassed any more”. “I was way beyond that...” “If I die now I would be very happy.” He continues “I yelled out my unbearable pleasure...” “I was exhausted and satiated”. “This could be the start of a very beautiful life for me.”

The narrative from the victim portrays the rape as being both exciting and pleasurable.

The publication is designed for sexual stimulation and speaks in very favourable terms of the rape experience. It promotes the view that rape victims will come to enjoy the activity and may even be attracted to the rapists.

The narrator is shown to so enjoy the experience that at the conclusion of the story he is waiting to see if further sexual activity will eventuate “I wouldn’t be the one to say no.”

The Board therefore finds that *Toilet Rape* “promotes or supports, or tends to promote or support, the use of violence or coercion to compel any person to submit to sexual conduct”.

Section 3(2)(d)

Under section 3(2)(d) of the Act, a publication is deemed to be objectionable if it “promotes or supports, or tends to promote or support, the use of urine, or excrement, in association with sexual conduct”. *Toilet Rape* contains scenes which involve the use of urine in association with sexual conduct.

Urination in association with sexual activity

At the beginning of the story the narrator describes having a semi erection while urinating, and finds this erotically pleasurable. He says “also, it felt so erotic pissing like that.”

Promotes or Supports

The Board finds the way in which the narrator in *Toilet Rape* describes the use of urine in association with sexual conduct, as arousing and pleasurable, is sufficient to state that the publication “promotes or supports or tends to promote or support the use of urine in association with sexual activity”.

Applicant’s Interpretation

The Applicant invites the Board to interpret section 3(2)(d) as having an additional requirement, of being subject to section 3(1) and “injurious to the public good”.

The Applicant submits that the section 3(2)(d) activity of urination in association with sexual conduct is not per se illegal, and therefore it cannot be injurious to the public good. This is in contradistinction to the other section 3(2) activities which are per se illegal.

The Board finds that section 3(2) is a deeming provision. In effect if a publication “promotes or supports, or tends to promote or support, the use of urine in association with sexual conduct”, then the section deems the publication to be “injurious to the public good” and hence “objectionable”.

The fact that section 3(2)(d) is the only activity which is not illegal per se has been recently considered by Parliament. In the report on the Films, Videos, and Publications Classification Bill presented to the House on 30 August 2004, Parliament retained section 3(2)(d) even though it did not describe a criminal offence.

In *Living Word Distributors Limited v Human Rights Action Group (Wellington)* [2000] 3 NZLR 570 the Court of Appeal stated in respect of an argument regarding the meaning of “matters such as sex” at paragraph 29: “there is no justification for reading down ‘matters such as sex’ by limiting the expression to abusive or degrading sex”.

The Board therefore does not accept the submission that as urophilia is not illegal, the plain words of the section should not be adhered to.

The Decision

The Board unanimously classifies the publication *Toilet Rape* as objectionable.

The Bill of Rights

The Board has considered the Bill of Rights Act and the five-step approach set out in *Moonen 1*.

Excisions

Section 32 of the Act does not allow the Board to consider excisions to the publications.